No. 89.

Brief of Miller for D. & C.

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SUPREME COURT OF THE UNITED STATES.

No. 89.

WM. GRANT, RECEIVER, PLAINTIFF IN ERROR,

versus

J. A. BUCKNER, DEFENDANT IN ERROR.

BRIEF ON BEHALF OF DEFENDANT IN ERROR.

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This case has already been twice before this Court, and the question now brought up may be said to involve the determination of the party on whom shall be thrown the cost of the funeral expenses.

As the facts are not adequately stated in the brief for the plaintiff in error, we shall briefly recount the leading events which resulted in the present litigation.

I.

Oliver J. Morgan was in ante-bellum times a wealthy planter in Carroll Parish, Louisiana, where he owned five plantations. His wife died intestate in 1844, leaving two children as her sole heirs. Under the law of Louisiana, these two children, as heirs of their mother, became the owners of her half of the property belonging to the community of acquets and gains that had prior to her death existed between her and her husband. But this owner-

ship was subject to their father's right of usufruct during his life.

All the plantations standing in Mr. Morgan's name at the time of his wife's death belonged to the community. The state of the title to these plantations after Mrs. Morgan's death was therefore that an undivided half thereof belonged to Mr. Morgan, as surviving spouse, and an undivided fourth thereof belonged to each of the two children as heirs of their mother's half of the community. 111 U. S. 644.

II.

In 1857, Mr. Morgan filed proceedings in the District Court of Carroll Parish to effect a partition of the plantations thus owned in common by himself and his children. The plantations were sold in this partition suit and were bought in by Mr. Morgan. The legal title to the whole of the plantations was thus vested on the records in him alone, and his children became entitled only to their proportions of the price at which he bid in the property. The amounts thus due the heirs, $67,495.70 each, was secured by vendor's privilege on the plantations which Mr. Morgan had so bought in.

III.

In 1858 Mr. Morgan decided to divide his own estate between his two heirs in the proportions of ¾ thereof to one —Mrs. Julia Morgan—and ¼ thereof to the other—O. H. Kellam—and at the same time and by the same instrument to transfer to each of them property to be in satisfaction of their claims against him arising from their heirship to his wife's half of the community. To carry

out this purpose he executed two acts of transfer, as to the nature, intent and effect of which there has been much discussion in this litigation. But this Court has finally decided that Mr. Morgan had two distinct objects in view in making these transfers. One object was to satisfy the rights and claims which his two heirs had against him in virtue of their inheritance of their mother's share in the community. The other object was to transfer to his heirs his property in the proportions in which he wished them to inherit it from him, but subject, during his lifetime, to a usufruct in his favor.

The transfers may, therefore, be described as being, *first*, in part, a sale, or giving in payment, by Mr. Morgan to his heirs in satisfaction of what was due them as heirs of his wife; and, *secondly*, in part, a donation by Mr. Morgan to his heirs, to take effect at his death.

IV.

By the above mentioned acts of mixed sale and donation Mr. Morgan transferred to his daughter, Mrs. Julia Morgan, four plantations, viz: Wilton, Albion, Morgana, and Westland.

To his other heir, O. H. Kellam, Jr., a great grandson, he transferred Melbourne Plantation.

V.

Mr. Morgan died in 1860 Shortly before his death he made a will disposing of his property in such a manner that it would go to his heirs in the same proportions in which it was transferred to them by the acts of 1858, just referred to.

This will expressly revoked all prior wills. It was duly

probated and O. T. Morgan, the executor named therein, qualified and proceeded to administer the estate.

VI.

In 1868 proceedings were taken by the heirs against the executor to compel him to sell the plantations, in order, as it was alleged, to pay the heirs the amounts which, it was asserted, was due them for their proportion of the price at which Mr. Morgan had bid in the plantations in 1857. It was claimed that the amounts so due the heirs were secured by vendor's privilege, so that the heirs would prime all the other creditors of the estate, who were all unsecured.

The theory on which this proceeding was initiated was apparently that the acts of transfer, executed by Mr. Morgan in 1858, were intended to be gifts only, and that they left his indebtedness to the heirs, on account of their inheritance of their mother's share in the community, wholly unsatisfied.

The plantations were sold under orders obtained in the proceedings just mentioned, and were bid in by the heirs, so that they continued to hold them in the same proportions as before the sale.

VII.

In 1872, William Gay, a creditor of old Mr. Morgan, instituted suit to set aside the last mentioned sale of the plantations made in 1868 at the instance of the heirs. After a protracted litigation judgment was rendered in that suit setting aside the sales complained of and decreeing that a portion of the title to the plantations should be considered as still in the succession of old Mr. Morgan and as subject to his debts. From that judgment an appeal

was taken to this Court which was heard and decided at the October Term, 1883, and is reported in the case of Johnson, Exr., vs. Waters, Admr., 111 U. S. 640.

This Court decided in the case just referred to:

First. That, in so far as the transfers made by Mr. Morgan in 1858 were intended to operate as *donations* of his own property, they were void. For if the donation was intended to be one *inter vivos*, it was void, because the donor reserved to himself the usufruct of the immovable given. And if it was intended to be a *testamentary* donation, it was void for want of form, and also because the last will of Mr. Morgan, probated in 1860, had expressly revoked all prior wills. 111 U. S. 646, 648.

Second. That, in so far as the transfers of 1858 were intended to operate as *sales*, or givings in payment, to convey to the heirs property to be accepted by them in satisfaction of their rights acquired by inheritance of old Mrs. Morgan's share of the community, they were valid. The case was then remanded for further proceedings.

VIII.

After the remanding of the suit, Mr. Buckner, now the sole owner of the Kellam interest, intervened and asserted his rights as owner of that interest, under the act of transfer made in 1858 to O. H. Kellam, Jr.

From a judgment of the Circuit Court rejecting his demands, Mr. Buckner appealed to this Court, and this Court held that the transfer of 1858 to Kellam was valid to the extent of one-half of the property covered by it. Mellen vs. Buckner, 139 U. S. 388.

The effect of the judgment of this Court is to recognize

that the Kellam interest in and title to Melbourne Plantation was for an undivided half thereof, and that that title was acquired under and dated from the act of transfer executed by Mr. Morgan in 1858. This necessarily follows from the recognition of the validity of the act of 1858, in so far as it was intended to be a sale or giving in payment.

IX.

Some time after the return to the Circuit Court of the mandate of this Court in the case of Johnson vs. Waters, 111 U. S. 640, in May, 1884, the Circuit Court appointed a Receiver to take charge of all the property of old Mr. ~~Johnson's~~ Morgan's which might be brought into his succession by means of this suit. From the very nature and object of the suit in which the Receiver was appointed, his authority could extend only to such property as belonged to Mr. ~~Johnson~~ Morgan, and did not and could not embrace property belonging to others. The sole object of the suit in which the Receiver was appointed was to recover Mr. ~~Johnson's~~ Morgan's property and to subject it to the pursuit of his creditors.

But the Receiver proceeded to claim and to take possession of the whole of Melbourne Plantation, as if the whole of it belonged to Mr. ~~Johnson's~~ Morgan's succession and was liable for his debts. Notwithstanding the fact that this Court had recognized the validity of the transfer to O. H. Kellam in 1858, in so far as that transfer was a sale, and had hereby recognized that a title to part of Melbourne had existed in the Kellams and their assigns since 1858, and notwithstanding the fact that Mr. Buckner, the representative of the Kellam interest, was in actual possession of the plantation, the Receiver ignored both the title and

the possession of Mr. Buckner, and himself took possession of the plantation. Mr. Buckner was forced either to quit the plantation altogether or else to rent it as a whole from the Receiver. Rather than leave a place on which he had been living for many years and in the improvement of which he had expended large sums of money, and to a large proportion of which he was confident he had a perfectly valid title, which would be sure to avail in the end, Mr. Buckner submitted and rented the entire plantation from the Receiver.

The ground upon which the Receiver took possession of the entire plantation was very obviously a misapprehension of the effect of the decree of this Court in 111 U. S. 640. He supposed that that decree had declared the act of 1858 to be invalid both as a donation and as a sale. Under this interpretation of the decree, he concluded that the entire plantation was thrown back into the succession of Mr. Morgan. But, as we have seen, this was an erroneous interpretation of the first decree of this Court. For this Court had, as it afterwards declared in 139 U. S. 388, admitted the validity of the act of 1858 in so far as it was an act of sale, and had decreed it to be void only in so far as it was an act of donation. In taking possession of the entire plantation, the Receiver and the Circuit Court were simply acting on a mistaken interpretation of the meaning and effect of the decree of this Court.

Acting on the mistaken supposition that the act of 1858 had been declared by this Court to be a nullity *in toto*, and that consequently the entire plantation fell back into the succession of Mr. ~~Johnson~~ Morgan, the Receiver collected and used

the whole of the rents of the entire plantation up to the 1st of January, 1891.

On March 23, 1891, this Court decreed that Mr. Buckner's title, derived under the act of 1858, covered an undivided one-half of the Melbourne Plantation. Mellen vs. Buckner, 139 U. S. 388. Obviously this decree did not *create* any title in Mr. Buckner, nor did it *transfer* to him a title till then vested in someone else; it did nothing but *declare* that he was the holder of the title which *Mr. Morgan had created* by the act of 1858, and determined the proportion of the plantation conveyed to him thereby.

Two years elapsed after the decree in the Mellen vs. Buckner case before the interest of the succession of Mr. O. J. Morgan in Melbourne was sold. The Receiver claims one-half of the rent for these two years, that is, one-half of the rent for the years 1891 and 1892. But Mr. Buckner refuses to pay this half. He insists that as he has been recognized and declared to be the owner of one-half of the plantation, under the act of transfer in 1858 to O. H. Kellam, Jr., the author of his title, he is, by virtue of his ownership of one-half of the plantation, entitled to one-half of the rents collected under the lease thereof; and that if he be credited with the portion of the paid rents to which he is entitled, his obligation for the half of the unpaid rents for the years 1891 and 1892 will be much more than discharged.

Now the statement filed by the Receiver shows that for the years 1886 to 1891, both inclusive, he collected from Mr. Buckner the total sum of $12,500 for the rental of the whole of Melbourne Plantation during that period. But as the succession of Mr. Morgan owned only one-half of the

plantation, the Receiver, representing and collecting for that succession only, was entitled to only one-half of the rents collected during this period, and the owner of the other half of the plantation, Mr. Buckner, was entitled to the other half. That is to say, that $6,250 of the rents should have gone to the Receiver as representing the estate of Mr. Morgan, the owner of one-half of the plantation, and $6,250 should have gone to or been retained by Mr. Buckner, the owner of the other half. To the demand that he should pay one-half of the rent for the plantation for the years 1891 and 1892, Mr. Buckner replied, that on a proper settlement and accounting of all the rents collected by the Receiver, it would appear that the Receiver owed Mr. Buckner about $4,650 after charging him (Buckner) with the half rents for the years in question. Mr. Buckner, therefore, peremptorily refused to comply with the Receiver's demand to pay the rent claimed by the Receiver. Thereafter the Receiver brought this suit against Mr. Buckner in the District Court for East Carroll Parish, Louisiana.

In his petition the Receiver avers that Mr. Buckner is indebted to him for one-half of the rent of Melbourne for the years 1891 and 1892 at $1,800 a year, and for one-half of the taxes for the same two years on said plantation, and also for the rent of Morgana Plantation for the same two years at $200 a year.

In his answer Mr. Buckner pleaded compensation, arising on the facts as above set forth, to the claims for rent and taxes of Melbourne, and denied that he was under any obligation whatsoever for the rent claimed to be due for Morgana.

The District Court in which the Receiver brought the suit, gave judgment in favor of the plaintiff on all his demands for the sum of $2,070.22, but decreed that this liability of the defendant was compensated and extinguished by the amount of rent which the Receiver had collected in excess of the proportion coming to the estate of Morgan during the entire period from 1886 to 1892. From this judgment the Receiver appealed to the Supreme Court of Louisiana, and that tribunal affirmed the judgment appealed from, with an amendment giving Mr. Buckner the right to demand of and recover from the Receiver the remainder of the amount due to Mr. Buckner, after using a part of the excess collections to compensate the claim of the Receiver allowed in the judgment. The present appeal is from the just mentioned judgment of the Supreme Court of Louisiana.

ARGUMENT.

Plaintiff in error has assigned six errors, but, as he admits in his brief (p. 6), only two questions of law are involved in them all, viz:

1. Whether the State Court had jurisdiction to render judgment compensating the claim set up in the petition, as it did.

2. Whether the State Court correctly interpreted and applied the judgment and decree of this Court rendered in Mellen vs. Buckner, 139 U. S. 410.

We shall first take up and discuss the second proposition.

I.

DID THE STATE COURT CORRECTLY INTERPRET AND APPLY THE DECISION AND DECREE OF THIS COURT RENDERED IN MELLEN VS. BUCKNER 139 U. S. 388, 410?

The plaintiff in error does not clearly state what, in his opinion, is the proper interpretation and effect of that decree. The implication from his argument is that he thinks that the title of Mr. Buckner was *created* by the decree, that its *existence* dates from the decree, and that prior thereto the title had no existence in law or fact, actually or potentially. Assuming that the Kellam-Buckner title came into existence only at the date of the decree of this Court on March 23, 1891, the Receiver thence argues that Mr. Buckner has no interest or right in the revenues of the place accrued prior to the time when his title began, that is, prior to March 23, 1891.

The argument of the appellant in regard to the title is not clearly expressed, but we believe that his position on that point is as we have stated it. For the question arising under the issues in this case is, necessarily, as to the date of the commencement of the Buckner title. If that title originated under the act of 1858, as we contend that it did, then the holders of the title are and always have been entitled to the same proportion of the rents of the place which they had to the title. And the proportion of the rents belonging to the holders of the Buckner title can no more be applied to the payment of the debts of Mr. Morgan than their proportion of the plantation itself could be so applied. In other words, it is incontrovertible that the Buckner half of Melbourne cannot be subjected to the debts of Mr. Morgan. It is equally incontrovertible that the rents accruing to the

Buckner half interest in that plantation cannot be subjected to Mr. Morgan's debts, nor to the payment of the costs of suits brought by his creditors against his succession. In determining, therefore, what rents are justly applicable to the debts and costs of Mr. Morgan's succession and what belong to the Buckner title, it is essential to determine the date at which the Buckner title was created. For from that date the holders of that title own their due proportion of the rents.

On this point we submit that the opinion and decree of this Court in both branches of the case which have been before it, clearly establish that the Kellam-Buckner title was created by and dates from the act of transfer made by Mr. Morgan in 1858. It is in fact impossible to assign any other beginning to this title.

But, the Receiver argues, this Court, though it may have adjudged the title to be in Buckner to one-half of the plantation, did not declare that he was entitled to one-half of the revenues. We submit that the right to the revenues necessarily followed the title. To decree that a man is and from a given date has been the owner of a particular piece of property, inevitably implies that he is also the owner of the revenues of that property from that date in the same proportion and to the same extent to which he owns the property. The rents follow the title. Having determined the person in whom the title resided and the act of transfer which created his title, it was unnecessary to add that he was also entitled to the rents corresponding to his title from the date of the act creating his title. The owner of the title would lose his right to the rents only in case that

the decree which declared his title expressly provided that he should not have the rents.

Not only does the decree of this Court not expressly provide that the rents shall not follow the title, but it clearly intends otherwise. The decree declares that the Buckner half of the plantation shall go to the owners thereof free from Mr. Morgan's debts and from any costs and charges of the receivership proceedings. To forfeit the *rents* accruing to that half and to turn them over to the receivership, would be to subject the most valuable element of the ownership, the revenues of the property, to the debts of Mr. Morgan and to the costs of the proceedings to enforce those debts. But not only is it clear from the terms of the decree of this Court that the owners of the Kellam-Buckner interest in Melbourne were to have that interest free from the debts and costs of the succession of Mr. Morgan, and that, as a necessary incident to the acquisition of the interest itself, they would also have the rents accruing to that interest, equally free, but this result has been reached by the Circuit Court in proceedings to which the Receiver was a party.

On June 3, 1893, the Circuit Court rendered a decree which held the Buckner interest in Melbourne liable for the costs of the receivership proceedings. Application was made by Mr. Buckner for a rehearing as to that part of this decree which held his interest in Melbourne liable for the costs and disbursements of the receivership suit. In passing on this application, the Circuit Court was required to determine the nature and date of the Buckner title, so as to ascertain whether it had passed under the

dominion of the Receiver and had become liable for the costs of the receivership suit. For obviously if the Buckner title dated only from the date of the decree of this Court, recognizing it on March 23, 1891, then up to that date the whole of Melbourne had been in the possession of the Receiver as a part of Mr. Morgan's property and the revenues would be liable for the costs of the suit. But if the Buckner title had antedated the receivership, then the property covered by that title was not embraced in the receivership and was not liable for the costs thereof. So the Circuit Court considered what was the real nature, origin and date of the Kellam-Buckner title. And, in announcing their conclusions on this question, they say:

"The opinion of the (Supreme) Court is clear that the act of 1858 was void as a donation, and it apparently intimates, as this Court afterwards decided, that it was equally void as a sale. The opinion and decree of the Supreme Court, however, rendered in the consolidated cases of Mellen vs. Buckner, reported in 139 U. S. 388, when carefully read and considered in the light of the facts and circumstances of the case, puts a different view upon the matter. In that case the act of 1858, while still held to be void as a donation, is held to be valid as a sale or appropriation for so much of the lands in question as were received by the heirs of Narcisse Deeson in payment of the debts due to them on account of the interest Narcisse Deeson had as the wife of Oliver J. Morgan in the community property, and it is said that this is substantially the view which the court entertained, although not fully explained in the case of Johnson vs. Waters.

* * * * * *

"From this last opinion and decree of the Supreme Court in the matte · we are forced to conclude that the portions of lands set off and adjudged to the heirs of Julia

Morgan and heirs of O. H. Kellam, Jr., were so set off and adjudged to them as the owners thereof in their own right as the heirs of Julia Morgan and O. H. Kellam, Jr., who were the heirs of Narcisse Deeson, the wife of Oliver J. Morgan, and not to them in any way as the heirs of Oliver J. Morgan, or as creditors or claimants of his estate.

* * * * * *

"To the extent of this increase the heirs of Julia Morgan and Oliver H. Kellam, Jr., participated in the fund recovered in the original case of Gay, Admr., vs. Morgan, Exr., but the careful reading and consideration which we have given the opinions and decrees of the Supreme Court, and particularly the supplemental decree in all the cases consolidated, give us the firm impression that the court intended to hold and declare that the portions recovered by said heirs were theirs of right, and that they were to have them, not only free of the claims of creditors of the estate of Oliver J. Morgan, but free from *all costs and claims* except as in the several decrees adjudged and as thereafter might be necessary in effecting partition." Tr. pp. 33 *et seq.*

The decree rendered pursuant to this opinion provided that "the said John A. Buckner and Etheline Buckner be, and are, now decreed to take and hold said one-half of the said Melbourne Plantation allotted to them free from said charge and liability for said costs, disbursements and solicitor's fees, charged against them in said decree of June 2, 1893, as contribution to the expenses of the prosecution of said cause, No. 6612, and of the causes herein consolidated, but that as to all other taxable costs, the same shall stand as the same are charged and decreed in the decree of the Supreme Court and other decrees of this Court made under and in obedience to the mandate of the Supreme Court as the same are recorded herein, and that, except as modified by this decree, the said decree of June 2 stand in all things confirmed and final." Tr. p. 37.

The State Court in the present suit has given the same interpretation and effect to the decree of this Court which

had been given to it by the Circuit Court; that is, it held that the decree of this Court recognizes the Kellam-Buckner title as having been created by the act of transfer made by Mr. Morgan in 1858, and declares that the holders of that title are not liable for the debts and costs of the succession of Mr. Morgan. It is an inevitable corollary to this interpretation that the rents of the Kellam-Buckner interest go to the holders of that interest free from the costs of the receivership.

The Receiver, however, relies upon a single clause in the decree of this Court in the case in 139 U. S. 410 as showing that this Court intended that the Kellam-Buckner interest should in any event be liable for the compensation of the Receiver. That is, he contends in effect that the decree of the Court puts the compensation of the Receiver on a different footing from the other costs of the receivership proceeding. Even when wholly isolated from its context and read apart from the rest of the decree, the clause cited by the Receiver will not, in our opinion, bear the interpretation put on it. And when considered in connection with what immediately precedes and follows it, it becomes perfectly clear that the clause in question was not intended to have the effect which the Receiver now contends should be given to it. Let us see.

In the Mellen vs. Buckner case (139 U. S.), this Court decided that the heirs of O. H. Kellam, Jr., had title to an undivided one-half of Melbourne, and that the heirs of Julia Morgan had title to an undivided two-fifths of the other four plantations. The decree then provided that the heirs might, if they chose, take their respective portions in the plantations by having them set off in severalty, free from

the debts and costs of the succession of Oliver J. Morgan; or that they might permit their portions in the plantations to be sold with the portions belonging to the succession, and take their proportion of the price. And in the event of the sale of the plantations as entireties, in that case, the proceeds of the sale, over and above expenses, including the costs of the receivership, were to be divided between the heirs and the creditors in the proportions in which the title was adjudged to be in the succession and in the heirs. The opinion of the Court, after providing that the heirs may, if they wish, take their parts in severalty, goes on:

"If the heirs should not desire to have their portions set off separately, then the whole property is to be sold, and they are to receive their proportional share of the proceeds, but no allowance for buildings. If any money remains in the hands of the Receiver, beyond the expenses incurred by him, and his proper compensation, they should be divided between the creditors and heirs in the proportions above stated; and the portion due to the heirs should be applied, as far as requisite, to the payment of costs awarded against them."

It is clear that the last sentence in the paragraph just quoted, which is the sentence on which the Receiver relies, refers only to the division which is to take place in the event that the heirs should elect to have the plantation sold as entireties by the Receiver, without setting their portions apart to them in severalty. But if the heirs should elect to segregate their interests from those represented by the receivership, and should take their portions in severalty, then the revenues incident to those interests would be theirs of right, and would come to them as the incident of the property, and there would be no division to be made between

them and the creditors. The heirs would simply take their portions of the plantations and with it the corresponding portion of the revenues, and the remainder would go to the creditors. The severance of the interests in the plantations would inevitably imply a similar severance of the revenues.

It is clear that the Circuit Court so understood the decree. The Buckners elected to take their half of Melbourne in severalty. (Tr. p. 21). The Circuit Court in its final decree has declared that the Buckners take their interest in Melbourne free from liability for "costs, disbursements and solicitor's fees." (Tr. p. 37). Then neither the Buckner interest in Melbourne, nor the revenues accruing to that interest, can be subjected to pay any of the costs, disbursements or solicitor's fees incurred in the receivership established over the property of O. J. Morgan.

This being the case, the Receiver, on a full accounting of all the rents of Melbourne from 1886 to 1892, has already received about $4650 more of the rents accruing during that period than he is entitled to, if the rents accruing to the Buckners are, like their interest in Melbourne, free from costs, disbursements and fees.

The State Courts have done nothing but adopt and give effect to the decree of this Court as understood and interpreted by the Circuit Court in a proceeding to which the Receiver was himself a party.

We submit that on the first proposition it is clear that the State Courts did properly interpret and apply the decree of this Court.

II.

The other question involved is:

DID THE STATE COURT HAVE JURISDICTION TO ALLOW THE DEFENSE SET UP?

By reference to the accounts filed by the Receiver (Tr. pp. 26 to 31), it will be seen that the balance of $4699.05, which he claims to be due him as Receiver, on April 7th, 1893, was simply the balance due him on his annual compensation of $2000. On this balance he has since that date received $1500. So that the amount now due the Receiver on his salary is only about $3200. And the object of this suit is to compel the owners of one-half of Melbourne to pay into the receivership rent for their own half of that plantation, in order to satisfy a balance of salary due to the Receiver of the property of the succession of O. J. Morgan.

We have seen that the title of the Buckners to their half of Melbourne long antedated the appointment of the Receiver to the property of O. J. Morgan; we have seen that this Court and the Circuit Court have decreed that the Buckners might, if they wished, take their half interest in the plantation, in severalty, free from the costs and disbursements of the receivership proceedings; we have seen that the Buckners formally elected to take their interest in severalty and free from the debts of O. J. Morgan and from the costs of and disbursements of the receivership; we have seen that the only charge shown on the accounts of the Receiver, as still due, is that for his own salary; so that the object of this suit is, notwithstanding the decree of this Court and of the Circuit Court, to subject the Buckner interest in Melbourne, or the rent due that interest, to liability for the indebtedness incurred in the receivership established over the property of O. J. Morgan.

But, the Receiver argues, while it may be true that he

has already received from the rents of Melbourne, from 1886 to 1892, more than $6250 above the sum coming to that part of Melbourne over which the receivership extended, still he is entitled to bring suit in the State Court against Mr. Buckner to compel him to pay into the receivership the whole of the rent, and that it is competent only to the Federal Court to decide in what proportions this entire rent must be divided. That is, by suing Mr. Buckner in the State Court, he thinks he can prevent Mr. Buckner from setting up the defense of compensation, resulting from the balance on the proper accounting of all the rents, which he could unquestionably have set up if the suit had been brought in the receivership proceedings in the Federal Court.

We submit that it would be grossly inequitable to permit the Receiver to go out of his own Court and bring a suit in another Court on the debit items of an account in such a way as to preclude the defendant from setting up as a defense the credit items in his favor arising from previous payments made by him to the Receiver in the same matter. Especially would the inequity of such a course be manifest when the sole object of the suit is to get money to pay the Receiver himself, and when the defendant had already sought to obtain an accounting from the Receiver in the receivership suit of the entire transaction. For Mr. Buckner filed a bill in the receivership suit on April 6, 1893, demanding from the Receiver a full accounting and settlement of all the rents of Melbourne. Tr. p. 24.

To this bill the Receiver could and should have filed a cross-bill, setting up any claims he might deem himself to have against Mr. Buckner in respect of such rents. In this manner the items of debit and credit would have been

determined by the Court of the receivership, and the balance due and the party by whom due would have been determined.

But the Receiver apparently sought to evade this suit by going into the State Court and contending that the State Court could hear his complaint and demand against Mr. Buckner, but could not hear Mr. Buckner's defense to that demand. That is, the Receiver contends that it is competent for him to remove into the State Court his demand against Mr. Buckner on the debit items of the rent account, but that it is not competent for Mr. Buckner to present in that Court the credit items which more than compensate the demands of the Receiver. And all this in a suit in which, as the Receiver's own accounts show, the Receiver is the sole person interested.

We submit that when, under the foregoing circumstances, the Receiver, on Nov. 26, 1896, more than three years after he had been sued in his own Court, of his own volition and without any compulsion, undertook to sue Mr. Buckner in the State Court, he thereby necessarily submitted to the State Court, the tribunal of his own selection, the entire controversy between himself and Mr. Buckner. It was competent, as the result of the Receiver's own action, for the State Court to pass on the entire matter, both as to what the Receiver owed Mr. Buckner and as to what Mr. Buckner owed the Receiver, to strike the balance on this account and to give judgment therefor to the party entitled.

We submit that the judgment of the Supreme Court of Louisiana should, therefore, be affirmed.

Respectfully submitted,

T. M. MILLER,

Of Counsel for Defendant in Error.